No. 90-198

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

ANNE ANDERSON, *et al.*,
Petitioners,

v.

BEATRICE FOODS CO.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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OBJECTIONS OF RESPONDENT TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

JEROME P. FACHER *
JAMES L. QUARLES III
NEIL JACOBS
RICHARD L. HOFFMAN
HALE AND DORR
60 State Street
Boston, Massachusetts 02109
(617) 742-9100
Attorneys for Respondent

* Counsel of Record

September 4, 1990

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Beatrice Foods Co. ("Beatrice") objects to the Motion of Conservation Research Group of Boston College Law School and Harvard Law School Environmental Law Society ("the proposed amici") for leave to file a brief amici curiae in support of the Petition For Writ of Certiorari, and, as reasons for its objections and refusal to consent to the motion, states as follows:

1. The proposed amici's brief in support of the Petition raises no issues, facts or rulings not raised by the prolix brief of the petitioners, and does not bring to the

Court's attention any relevant matter not already addressed by the parties.

The alleged "interest" of the proposed amici has already been presented in the Petition and the proposed brief amici curiae is only repetitive of matters argued by the petitioners. These include the identical unsupported arguments already made by the petitioners and rejected by the Courts below. Thus, the proposed amici have completely failed to identify the nature of any interest, or any facts or questions of law that have not been adequately presented by the parties. *Cf.* Rule 37.4.

2. The proposed brief represents yet another improper attempt by petitioners to improperly increase the page length or content of briefs permitted them. Petitioners have previously engaged in this practice both in their Petition and before the Court of Appeals (see Respondent's Brief in Opposition p.14, f.n.1). Moreover, in *Anderson I* they attempted to file a spurious brief amici curiae, ghost-written by petitioners' counsel, which was ultimately withdrawn when that fact was exposed. (See Order of Court of Appeals dated March 25, 1988—attached hereto—permitting striking of proposed brief).

3. The proposed brief misstates the facts, distorts the record, and attempts to create non-existent issues in the same manner as the Petition. Chief among such distortions is the misstatement that petitioners' repeated accustations of fraud on the court were not fully considered, and that neither the District Court nor the Court of Appeals addressed the late-filed affidavits of Rileyco's counsel, Ms. Ryan. The record, which the proposed amici appear to deliberately ignore, demonstrates that full consideration was given those rejected allegations, including the District Court's hearing lengthy and detailed arguments on the accuracy, relevance and significance of the affidavits and Beatrice's counter-affiadavits (Tr. 11/15/89 pp. 13-47, 51). Thereafter, the petitioners' motions for sanctions and default based on these affidavits were

denied. The Court of Appeals fully considered all of these matters and not only approved the District Court's findings, rulings and recommendations, but specifically held there was no fraud on the court. Petitioners' petition for rehearing, which raised the same issues and involved the same affidavits, was also denied (P.A. 121a-122a). Additional rhetoric by the proposed amici cannot change these facts or these realities despite the proposed amici's attempts to pretend they do not exist.

4. The proposed brief also ignores the only legal issue in this fact-intensive case which was whether the trial judge abused his discretion in denying a motion to vacate judgment in a case where he was the most familiar with the facts having presided over pretrial discovery, a long trial and a special evidentiary inquiry. Moreover, despite its proposed concern for the "integrity of the litigative process" (Am. Br. 3), the proposed brief completely ignores the serious misconduct by petitioners which led to the rulings of the District Court and the Court of Appeals that petitioners violated Rule 11 by knowingly prosecuting and maintaining a tannery case which did not exist.

5. The proposed brief also attempts to distort the findings and rulings of the trial judge and the decisions of the Court of Appeals. Contrary to the misstatements of the proposed brief (Am. Br. 6, 7-8), the Court of Appeals did *not* hold that a finding of substantial interference need only apply to "one element" of the case. Nor did the trial judge's finding that there had been no disposal of complaint chemicals concern a "separate aspect" of the case (Am. Br. 6), whatever that deliberately obscure and newly-invented phrase may mean. On the contrary, as the record makes clear, whether there had been disposal of complaint chemical was the crucial and dispositive element of the entire case. Unless there had

been disposal, there could be no contamination and therefore no case. That reality was emphasized by the jury verdict itself, by the Court of Appeals decision in *Anderson I*, and by the facts found by the trial judge following the remand inquiry.

Also ignored by the proposed amici is the fact that the petitioners knew that disposal at the tannery site was essential to any tannery case and that their own investigation showed there was no such disposal. Thus, the Rule 11 finding emphasized the serious misrepresentations which had been made to both courts by the petitioners claiming the existence of a tannery case when they knew full well that none existed.

6. The contention of the proposed amici that the courts below did not consider all issues raised by petitioners (and now repeated in the proposed brief) is contradicted by the record showing that the trial court fully heard, and ruled on, all matters raised by petitioners. The decision of the Court of Appeals plainly also stated that it too had considered "each and all" of the objections by petitioners to the trial judge's findings, rulings and recommendations and had found such objections without merit and unworthy of specific comment (P.A. 119 (a) and n.8).

CONCLUSION

The Motion for Leave to File Brief Amici Curiae serves no purpose and provides no assistance to this Court on the issue decided by the Court of Appeals. In fact, the proposed brief attempts to obscure that issue, and engages in misstatements and distortions of the record. Its only purpose is to repeat the same arguments already rejected both by the trial judge and by the Court of Appeals. As such, it is an unnecessary burden on the time, staff, and facilities of the Court. Accordingly, the motion for leave to file a brief amici curiae should be denied.

By its attorneys,

JEROME P. FACHER *
JAMES L. QUARLES III
NEIL JACOBS
RICHARD L. HOFFMAN
HALE AND DORR
60 State Street
Boston, Massachusetts 02109
(617) 742-9100
Attorneys for Respondent

September 4, 1990

* Counsel of Record

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 88-1070

ANNE ANDERSON, *et al.*,
Plaintiffs, Appellants,

v.

CRYOVAC, INC., *et al.*,
Defendants, Appellees.

ORDER OF COURT

Entered: March 25, 1988

Upon motion,

Leave is granted Massachusetts Academy of Trial Attorneys to strike its "Motion For Leave To File Brief of Amicus Curiae and For Leave To Participate at Oral Hearing Argument."

The Clerk is directed to return the tendered briefs to Counsel.

By the Court:

FRANCIS P. SCIGLIANO
Clerk

[cc: Messrs. Nesson, Facher, Brown, Roisman, Mone and Sarouf]